

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 N. 5th STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

In the Matter of

TGM ASSOCIATES L.P.
New York, New York

Respondent

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Docket No. TSCA-07-2003-0051

CONSENT AGREEMENT AND FINAL ORDER

INTRODUCTION

Prior to the filing of a complaint in this matter, the parties have agreed to the settlement of an administrative cause of action for the assessment of civil penalties under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), in accordance with the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, found at 40 C.F.R. Part 22. Pursuant to 40 C.F.R. § 22.13(b), it is the intent of the parties to simultaneously commence and conclude this proceeding by the issuance of this Consent Agreement and Final Order.

The Complainant, by delegation from the Administrator of the United States Environmental Protection Agency (EPA), and the Regional Administrator, EPA, Region 7, is the Director, Air, RCRA, and Toxics Division, EPA, Region 7. The Respondent is TGM Associates L.P., 650 Fifth Avenue, 28th Floor, New York, NY 10019.

COMPLAINANT'S ALLEGATIONS

Complainant has reason to believe that Respondent has violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. part 745, subpart F - Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property ("Disclosure Rule"), which was promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d. Specifically, Complainant alleges:

Allegations Pertaining to All Counts

1. TGM Associates L.P. ("Respondent"), is a New York limited partnership.
2. For all periods of time relevant to the violations alleged herein, TGM Woodbridge, Inc. ("Owner") owned a residential apartment complex located at 3801 W. 13th Street, Wichita, Kansas, and known as Morgan's Landing (the "Property").
3. The Property was constructed prior to 1978.
4. The Property is "target housing" as defined by 40 C.F.R. § 745.103.
5. Prior to the violations alleged herein, Respondent had entered into a contract or agreement with the Owner, for the purpose of leasing the property.

Allegations Pertaining to Counts I through IV
Apartment 701 Contract

6. On or about June 15, 2001, Respondent entered into a rental agreement (the "Apartment 701 Contract") with Tracy Bray and John Lowman for the lease of the Property, Apartment 701, for residential use.

7. Subsequent to the Apartment 701 Contract, Tracy Bray and John Lowman moved into Apartment 701 along with their three children.

8. As a result of the Apartment 701 Contract, the Owner became a "lessor", Respondent became an "agent", and Tracy Bray and John Lowman became "lessees", as those terms are defined by 40 C.F.R. § 745.103.

Count I
Failure to Provide Pamphlet

The facts stated in Paragraphs 1 through 8 above, are herein restated and incorporated.

9. Pursuant to 40 C.F.R. § 745.107(a)(1), before the lessee is obligated under any contract to lease target housing, the lessor of target housing must provide the lessee with an EPA-approved lead hazard information pamphlet.

10. Pursuant to 40 C.F.R. § 745.115(a)(2), an agent must ensure that lessors have complied with 40 C.F.R. § 745.107(a)(1), or must personally ensure compliance with the same.

11. Both the Owner and Respondent failed to provide an EPA-approved lead hazard information pamphlet to Tracy Bray and John Lowman prior to being obligated under the Apartment 701 Contract.

12. Respondent's failure to ensure that an EPA-approved lead hazard information pamphlet was provided to Tracy Bray and John Lowman prior to being obligated under the Apartment 701 Contract is a violation of 40 C.F.R. §§ 745.107(a)(1) and 745.115(a)(2) and Section 409 of TSCA.

Count II
Failure to Include Lead Warning Statement

The facts stated in Paragraphs 1 through 8 above, are herein restated and incorporated.

13. Pursuant to 40 C.F.R. § 745.113(b)(1), the lessor is required to include in each contract to lease target housing, either as an attachment to or within the contract, a lead warning statement with the following language:

“Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.”

14. Pursuant to 40 C.F.R. § 745.115(a)(2), an agent must ensure that lessors have complied with 40 C.F.R. § 745.113(b)(1), or must personally ensure compliance with the same.

15. Both the Owner and Respondent failed to include in the Apartment 701 Contract an attachment containing a lead warning statement with the language required by 40 C.F.R. § 745.113(b)(1), as set out in Paragraph 13 above.

16. Respondent's failure to ensure that included in the Apartment 701 Contract was an attachment containing a lead warning statement with the language required by 40 C.F.R. § 745.113(b)(1), as set out in Paragraph 13 above, is a violation of 40 C.F.R. §§ 745.113(b)(1) and 745.115(a)(2), and Section 409 of TSCA.

Count III
Failure to Include Disclosure Statement

The facts stated in Paragraphs 1 through 8 above, are herein restated and incorporated.

17. Pursuant to 40 C.F.R. § 745.113(b)(2), the lessor is required to include in each contract to lease target housing, either as an attachment to or within the contract, a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target

housing being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards.

18. Pursuant to 40 C.F.R. § 745.115(a)(2), an agent must ensure that lessors have complied with 40 C.F.R. § 745.113(b)(2), or must personally ensure compliance with the same.

19. Both the Owner and Respondent failed to include in the Apartment 701 Contract an attachment containing a statement disclosing the Owner's knowledge of the presence of lead-based paint and/or lead-based paint hazards in the Property or indicating that the Owner had no such knowledge.

20. Respondent's failure to ensure that included in the Apartment 701 Contract was an attachment containing a statement disclosing the Owner's knowledge of the presence of lead-based paint and/or lead-based paint hazards in the Property or indicating that the Owner had no such knowledge, is a violation of 40 C.F.R. §§ 745.113(b)(2) and 745.115(a)(2), and Section 409 of TSCA.

Count IV
Failure to List Records or Reports

The facts stated in Paragraphs 1 through 8 above, are herein restated and incorporated.

21. Pursuant to 40 C.F.R. § 745.113(b)(3), the lessor is required to include in each contract to lease target housing, either as an attachment to or within the contract, a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead based paint hazards in the housing that have been provided to the lessee, or an indication that no such records or reports were available if that is the case.

22. Pursuant to 40 C.F.R. § 745.115(a)(2), an agent must ensure that lessors have complied with 40 C.F.R. § 745.113(b)(3), or must personally ensure compliance with the same.

23. Both the Owner and Respondent failed to include, either as an attachment to or within the Apartment 701 Contract, a list of any records or reports available to the Owner pertaining to lead-based paint and/or lead-based paint hazards in the Property that have been provided to Tracy Bray and John Lowman, or an indication that no such records or reports are available, as required by 40 C.F.R. § 745.113(b)(3).

24. Respondent's failure to ensure that included in the Apartment 701 Contract was a list of any records or reports available to the Owner pertaining to lead-based paint and/or lead-based paint hazards in the Property that have been provided to Tracy Bray and John Lowman, or an indication that no such records or reports are available, is a violation of 40 C.F.R. §§ 745.113(b)(3) and 745.115(a)(2), and Section 409 of TSCA.

Allegations Pertaining to Counts V through VIII
Apartment 1001 Contract

25. On or about February 22, 2002, Respondent entered into a rental agreement (the "Apartment 1001 Contract") with Lukiko and Faith Brown for the lease of the Property, Apartment 1001, for residential use.

26. Subsequent to the Apartment 1001 Contract, Lukiko and Faith Brown moved into Apartment 1001 along with their child.

27. As a result of the Apartment 1001 Contract, the Owner became a "lessor", Respondent became an "agent", and Lukiko and Faith Brown became "lessees", as those terms are defined by 40 C.F.R. § 745.103.

Count V
Failure to Provide Pamphlet

The facts stated in Paragraphs 1 through 5, and 25 through 27, above, are herein restated and incorporated.

28. Pursuant to 40 C.F.R. § 745.107(a)(1), before the lessee is obligated under any contract to lease target housing, the lessor of target housing must provide the lessee with an EPA-approved lead hazard information pamphlet.

29. Pursuant to 40 C.F.R. § 745.115(a)(2), an agent must ensure that lessors have complied with 40 C.F.R. § 745.107(a)(1), or must personally ensure compliance with the same.

30. Both the Owner and Respondent failed to provide an EPA-approved lead hazard information pamphlet to Lukiko and Faith Brown prior to being obligated under the Apartment 1001 Contract.

31. Respondent's failure to ensure that an EPA-approved lead hazard information pamphlet was provided to Lukiko and Faith Brown prior to being obligated under the Apartment 1001 Contract is a violation of 40 C.F.R. §§ 745.107(a)(1) and 745.115(a)(2) and Section 409 of TSCA.

Count VI
Failure to Include Lead Warning Statement

The facts stated in Paragraphs 1 through 5, and 25 through 27, above, are herein restated and incorporated.

32. Pursuant to 40 C.F.R. § 745.113(b)(1), the lessor is required to include in each contract to lease target housing, either as an attachment to or within the contract, a lead warning statement with the following language:

"Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention."

33. Pursuant to 40 C.F.R. § 745.115(a)(2), an agent must ensure that lessors have complied with 40 C.F.R. § 745.113(b)(1), or must personally ensure compliance with the same.

34. Both the Owner and Respondent failed to include in the Apartment 1001 Contract an attachment containing a lead warning statement with the language required by 40 C.F.R. § 745.113(b)(1), as set out in Paragraph 32 above.

35. Respondent's failure to ensure that included in the Apartment 1001 Contract was an attachment containing a lead warning statement with the language required by 40 C.F.R. § 745.113(b)(1), as set out in Paragraph 32 above, is a violation of 40 C.F.R. §§ 745.113(b)(1) and 745.115(a)(2), and Section 409 of TSCA.

Count VII
Failure to Include Disclosure Statement

The facts stated in Paragraphs 1 through 5, and 25 through 27, above, are herein restated and incorporated.

36. Pursuant to 40 C.F.R. § 745.113(b)(2), the lessor is required to include in each contract to lease target housing, either as an attachment to or within the contract, a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards.

37. Pursuant to 40 C.F.R. § 745.115(a)(2), an agent must ensure that lessors have complied with 40 C.F.R. § 745.113(b)(2), or must personally ensure compliance with the same.

38. Both the Owner and Respondent failed to include in the Apartment 1001 Contract an attachment containing a statement disclosing the Owner's knowledge of the presence of lead-based paint and/or lead-based paint hazards in the Property or indicating that the Owner had no such knowledge.

39. Respondent's failure to ensure that included in the Apartment 1001 Contract was an attachment containing a statement disclosing the Owner's knowledge of the presence of lead-based paint and/or lead-based paint hazards in the Property or indicating that the Owner had no such knowledge, is a violation of 40 C.F.R. §§ 745.113(b)(2) and 745.115(a)(2), and Section 409 of TSCA.

Count VIII
Failure to List Records or Reports

The facts stated in Paragraphs 1 through 5, and 25 through 27, above, are herein restated and incorporated.

40. Pursuant to 40 C.F.R. § 745.113(b)(3), the lessor is required to include in each contract to lease target housing, either as an attachment to or within the contract, a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead based paint hazards in the housing that have been provided to the lessee, or an indication that no such records or reports were available if that is the case.

41. Pursuant to 40 C.F.R. § 745.115(a)(2), an agent must ensure that lessors have complied with 40 C.F.R. § 745.113(b)(3), or must personally ensure compliance with the same.

42. Both the Owner and Respondent failed to include, either as an attachment to or within the Apartment 1001 Contract, a list of any records or reports available to the Owner pertaining to lead-based paint and/or lead-based paint hazards in the Property that have been provided to Lukiko and Faith Brown, or an indication that no such records or reports are available, as required by 40 C.F.R. § 745.113(b)(3).

43. Respondent's failure to ensure that included in the Apartment 1001 Contract was a list of any records or reports available to the Owner pertaining to lead-based paint and/or lead-based paint hazards in the Property that have been provided to Lukiko and Faith Brown, or an indication that no such records or reports are available, is a violation of 40 C.F.R. §§ 745.113(b)(3) and 745.115(a)(2), and Section 409 of TSCA.

CONSENT AGREEMENT

1. For the purposes of this proceeding, Respondent admits that Complainant has jurisdiction to bring this action pursuant to the statutory and regulatory provisions cited above, and neither admits nor denies Complainant's factual allegations above.

2. For purposes of this Consent Agreement, Respondent waives its right to contest Complainant's allegations above, and its right to appeal the Final Order accompanying this Consent Agreement.

3. Respondent and Complainant agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

4. Respondent and Complainant agree that the scope of this Consent Agreement and Final Order only includes alleged violations associated with Respondent's management of the Morgan's Landing apartment complex in Wichita, Kansas, and no other apartment complexes.

5. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of Respondent's knowledge, it is presently in compliance with all requirements of 40 C.F.R. part 745, subpart F - Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property ("Disclosure Rule").

6. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty in the amount of Five Thousand and Twenty Dollars (\$5020) to be paid within thirty (30) days of the effective date of the Final Order, in full resolution of this matter.

7. Respondent understands that its failure to timely pay any portion of the mitigated civil penalty stated in Paragraph 6 above may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the rate determined by the Secretary of the Treasury (five percent (5%)) per annum for the period January 1, 2002, through December 31, 2002) on the unpaid balance until such civil penalty and/or stipulated penalty and any accrued interest are paid in full. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a five percent (5%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

FINAL ORDER

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 et seq., and based upon the information set forth in the Consent Agreement accompanying this Final Order, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a mitigated civil penalty of Five Thousand and Twenty Dollars (\$5020) to be paid within thirty (30) days of the effective date of the Final Order. Such payment shall identify the Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

EPA-Region 7
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251.

2. A copy of the check must be sent simultaneously to each of the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 7
901 N. 5th Street
Kansas City, Kansas 66101; and

Mike Gieryic
Office of Regional Counsel
U.S. Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101.

3. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

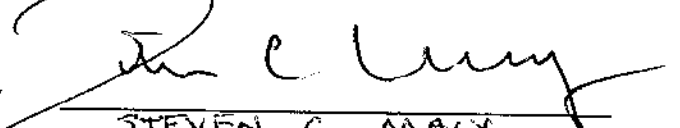
RESPONDENT:

TGM ASSOCIATES L.P.

By: T J G HOLDINGS, INC. ITS ~~GENERAL PARTNER~~

Date January 2, 2003

By

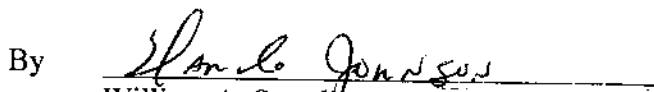

STEVEN C. MACY
EXECUTIVE VICE PRESIDENT
Title

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY


Date 4/6/03

By



William A. Spratlin
for Director
Air, RCRA, and Toxics Division

Date January 6, 2003

By


Mike Gieryc
Assistant Regional Counsel

IT IS SO ORDERED. This Final Order shall become effective immediately.


Robert L. Patrick
Regional Judicial Officer

Date

January 15, 2003

IN THE MATTER OF TGM Associates L.P., Respondent
Docket No. TSCA-07-2003-0051

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

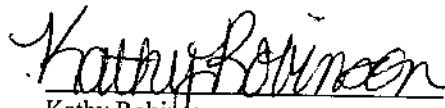
Copy hand delivered to
Attorney for Complainant:

Mike Gieryic
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by First Class Mail Return Receipt:

TGM Associates L.P.
650 Fifth Avenue, 28th Floor
New York, New York 10019

Dated: 1/17/03


Kathy Robinson
Regional Hearing Clerk

IN THE MATTER OF TGM Associates L.P., Respondent
Docket No. TSCA-07-2003-0051

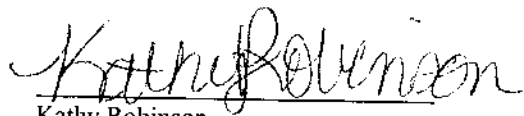
CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy by First Class Mail Return Receipt:

Karen M. Hansen
Swidler Berlin Shereff Friedman, LLP
The Washington Harbour
3000 K Street, Suite 300
Washington, D.C. 20007-5116

Dated: 1/21/03


Kathy Robinson
Regional Hearing Clerk